



**DON'T KEEP THE PUBLIC GUESSING:
BEST PRACTICES IN NOTICE OF COPYRIGHT AND
TERMS & CONDITIONS OF USE FOR
GOVERNMENT WEB SITE CONTENT**

**CENDI Copyright & Intellectual Property
Working Group**

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EXECUTIVE SUMMARY

Users often assume that information on Federal agency web sites is in the public domain¹ and unprotected by copyright. However, U.S. Government web sites may include information subject to terms and conditions of use based on private entity intellectual property rights. Under the law, the burden is on users of the information to identify the copyright and intellectual property status, but identifying the rights or how to obtain permission can be very difficult.

As an initial step, government agencies should inform the public that information on agency web sites may be copyrighted or subject to other intellectual property rights, and are subject to terms and conditions of use. The rights of the public to the information presented on government web sites should be clear and should include any limitations on down-stream use and redistribution. This should be done by a clear, consistent and prominently presented Copyright and Intellectual Property Policy statement on the homepage or readily accessible as part of an aggregated Notices page. If specific resources or categories of resources can be identified as either being copyrighted or in the public domain these should be explicitly noted.

In addition, the CENDI Copyright Working Group recommends instituting policies and procedures for government web site administration and content management that encourage agencies, upon creation or acquisition of information and prior to posting it on the website, to identify the intellectual property status of the information and any terms and conditions on its use, and to place statements about these rights, terms and conditions on their websites.

Unless agency web sites squarely address copyright status of their contents, the government perpetuates incorrect assumptions and contributes to the confusion over private intellectual property rights.

¹ CENDI Frequently Asked Questions About Copyright. FAQ 2.2.4.

<http://www.dtic.mil/cendi/publications/04-8copyright.html#224> Public domain refers to works that are not protected by copyright and are publicly available. They may be used by anyone, anywhere, anytime without permission, license or royalty payment.

The Opportunity: Provide Better Notices of Copyright and Terms and Conditions of Use for Government Web Sites

The law places the burden of determining the copyright status of a work on users of the work. Without a copyright notice or a statement of terms and conditions of use, the user must assume the work is copyrighted, investigate its status and seek permission if an intended use is beyond that allowed by law.² Moreover, without a copyright notice or terms and conditions of use statement, users may find it difficult to identify the right person to provide required permissions. A cursory investigation of agency web sites shows that few agencies provide copyright notices or terms and conditions of use statements that could help users determine their right to use information on agency web sites.

As citizen-centric, E-government initiatives mature, it is important to set a framework for government information dissemination that deals with issues relating to copyright and intellectual property. Capturing and conveying information about rights related to information on government web sites should be addressed now while standards and best practices for web site development are being discussed and implemented.

Current Environment

It is a commonly held belief that information published or sponsored by the U.S. Government³ or available from a U.S. government source such as a web site is in the public domain. However, a key finding in the 1999 Government Printing Office [Report on the Assessment of Electronic Government Information Products](#)⁴ is that “fifteen percent of the products surveyed are not in the public domain, for all or part of the product.” A look at authors and owners of government information suggests that the percentage may be greater and is likely increasing with government’s growing reliance on the private sector to conduct the business of government.⁵

The reality is that government web sites may contain a variety of copyrighted and public domain materials with different terms and restrictions for use.

Public domain materials include:

- Works created by employees or officers of the U.S. Government as part of their official duties ([17 USC § 105](#)) and there is no other statutory basis for the government to restrict its access.
- Works whose copyright protections have expired or been abandoned.

² 17 USC §§ 107 through 120 <http://www.copyright.gov/title17/92chap1.html> establish limitations on or exceptions to exclusive rights.

³ Barriers to the Effective Management of Government Information on the Internet and other Electronic Records," http://www.cio.gov/documents/ICGI/ERPWG_Barriers.pdf dated June 28, 2003, by the Electronic Records Policy Working Group of the U.S. Federal Interagency Committee on Government Information contains a discussion of various definitions of government information.

⁴ [Report on the Assessment of Electronic Government Information Products](#) – March 1999 by Westat, Inc. under a contract issued by the National Commission on Libraries and Information Science and commissioned by the United States government Printing Office.

⁵ Fact Sheet on the New True Size of Government by Paul C. Light, Brookings Institution, November 2003. <http://www.brookings.edu/gs/cps/light20030905.htm>.

Copyright protected materials include:

- Works produced by contractors and grantees for the government which grant the government an irrevocable, worldwide, nonexclusive, royalty-free license to “use, modify, reproduce, release, perform, display or disclose these works” within the government without restriction and to allow others to do so for U.S. Government purposes.”⁶ The government’s license does not place these works in the public domain.
- A copyrighted work for which the copyright has been transferred to the government by assignment or bequest, and which, therefore, is not in the public domain.

In addition:

- Some of these works may include embedded information (e.g., quotation, photograph, chart, drawing, etc.) which is copyrighted but used under license or with permission. The government’s permitted use of a copyrighted work does not place it in the public domain.
- Government web sites and products may include links to copyrighted information or licensed materials that are provided to the public with limited terms and conditions of use.
- Government web sites may include logos or product names that are trademarked by the government or by other organizations.
- Government web sites may have software that may have specific intellectual property rights and use restrictions.

Many government agencies give no notice about the copyright status or terms and conditions of use for information and content on agency web sites. Even when an agency does provide a statement, it may not be identified as a Copyright policy and it may be buried in the site or incorporated into “Privacy and Security” or “Disclaimer” notices. Additionally, components within agencies may have their own copyright notices and these may differ from those of the parent organization.

Furthering public misperception, government agencies often advise that in the absence of a copyright notice, users may assume the information is not copyrighted. This contradicts the Copyright Law as amended in 1989 when the United States joined the Berne Convention, the international agreement to harmonize Copyright laws. While use of a copyright notice and registration was once required as a condition of copyright protection in the United States, it is now optional, and a work is not in the public domain simply because it does not have a copyright notice.

⁶ Civilian agencies are guided in contracting by the Federal Acquisition Regulations (FAR) FAR Subpart 27.4--Rights in Data and Copyrights. The Department of Defense (DoD) is guided by the Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 227.4 and Part 211 and Part 252. Grants to nonprofit organizations are covered by OMB Circular A-110.

What Could Be

As an initial step, government agencies should inform the public that information on agency web sites may be copyrighted and may be subject to various terms and conditions of use. The rights of the public to use, reproduce and redistribute any copyrighted information presented on the government web site should be clearly stated. This should include any limitations on down-stream use and redistribution. If specific resources or categories of resources can be identified as either being copyrighted or in the public domain these should be explicitly noted.

Government agencies should clearly, consistently and prominently present a Copyright Policy statement on their main homepage in a stand-alone "click," similar to other upper level home page notices (e.g., Privacy, Security, 508 Compliance, etc.), or readily apparent as part of an aggregated Notices page. Because agency situations may differ, specific wording for such a statement is not provided in this white paper. Some examples of best practices are provided in Appendix A.

In addition, more specific notices for special collections, categories of material, or licensed products should be readily accessible within these resources.

Special attention should be given to the agreements for licensed resources, which may contain required wording for terms and conditions and instructions for making these resources available via the web.

The Copyright and Terms and Conditions of Use Statement should be reviewed by appropriate legal counsel, content managers and librarians.

Additional Recommendations

The recommendation to provide a Copyright and Terms and Conditions of Use Statement on the main homepage is only an initial step in clearing up confusion for users of government web sites. Additional recommendations include:

Agencies should establish policies and procedures whereby their employees, contractors and grantees will mark individual digital objects or components such as documents, images, etc., with the copyright status. This is particularly important for copyrighted materials in larger government works.

Because publication dates are critical to determining whether previously copyrighted information moves into the public domain, agencies should encourage employees, contractors and grantees to include the year of publication on all works or components of works such as images.

When developing requirements for and procuring content/document/records management systems, consideration should be given to the system's ability to include intellectual property rights management markings and metadata to assist users in determining intellectual property rights of web site content.

Conclusion

There are both immediate and longer term guidelines that can more appropriately and consistently convey the rights of the public to information on government web sites.

Unless agency web sites clearly and adequately identify the copyright status of their contents, the public will be confused on what use it can make of the information and so may violate the rights of the owner of the information.

Addressing these issues will:

- Guard the legal and financial rights of the government and the public;
- Respect and protect the intellectual property rights of others;
- Reduce the burden of rights determination for content use, repurposing and preservation; and
- Promote a culture of intellectual property awareness and responsibility within government and among citizens.

APPENDIX A: Best Practices

Examples of government agency copyright policies and statements are:

Library of Congress <http://www.loc.gov/homepage/legal.html#COPY>

American Memory, Copyright, and Other Restrictions

<http://lcweb2.loc.gov/ammem/copyrit2.html>

Digital Preservation. Digital Reproductions: Copyright and Other Restrictions

<http://www.loc.gov/preserv/digital/dp-copyright.html>

Prints and Photographs Division. Copyright and Other Restrictions Which Apply to Publication and Other Forms of Distribution of Images: Sources for Information

http://www.loc.gov/rr/print/195_copr.html

National Archives and Records Administration

<http://www.archives.gov/welcome/index.html>

Bottom left of page, click on:

Privacy and Use http://www.archives.gov/global_pages/privacy_and_use.html

Copyright, Restrictions, and Permissions Notice

http://www.archives.gov/global_pages/privacy_and_use.html#copyright

National Library of Medicine

Generic copyright statement that appears on all major web pages.

<http://www.nlm.nih.gov/copyright.html>

Web pages that incorporate licensed proprietary materials:

<http://www.nlm.nih.gov/medlineplus/faq/imageuse.html>

<http://www.nlm.nih.gov/medlineplus/encyclopedia.html>

<http://householdproducts.nlm.nih.gov/about.html>

<http://householdproducts.nlm.nih.gov/cgi-bin/household/brands?tbl=brands&id=1004003>

Web pages that contain copyrighted history materials:

<http://profiles.nlm.nih.gov/KK/B/B/F/P/>

<http://www.nlm.nih.gov/pubs/factsheets/ihmfact.html>

National Science Foundation:

Web and Other Policies <http://www.nsf.gov/home/pubinfo/webpolicy.htm>

Guidelines for Reproducing or Using Material from the NSF Web Site

<http://www.nsf.gov/home/pubinfo/reuse.htm>

Smithsonian Institution: Copyright Terms and Conditions.

<http://www.si.edu/copyright/>

U.S. Mint: Terms of Use – Intellectual Property

<http://www.usmint.gov/policy/index.cfm?action=TermsOfUse>

Gail